IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1518 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 07//09//2004 in WP No. 24562 OF 2003 on the file of the High Court.)

Between:

M/s. Vijaya Indane Gas Agency, 25/2/981-1, Opp: DSR Govt HO. Hospital Dargamitta, Nellore-524 004 rep by Proprietrix N. Nalini

..... APPELLANT

AND

1 The Area Manager (LPG) Indian Oil Corporation Limited Indane Area Office GVR Towers, II Floor, Bharathi Nagar, Ring Road Vijayawada
2 The Asst. Manager (LPG) Indian Oil Corporation Limited Flat No.11, Anjana Apartments, Tekkemetta, Nellore, Nellore District
3 M/s. Krishna Agency Indane Gas Distributor 26/426-C1, GT Road, Opp: Kasturidevi High School, Nellore
4 Chief L.P.G. Manager, Indian Oil Corporation Ltd., Himayathnagar, Hyderabad
5 The General Manager (LPG) Indian Oil Corporation Ltd., (Marketing Division) Himayathnagar, Hyderabad

.....RESPONDENTS

Counsel for the Appellant:MR.T.AMARNATH GOUD

Counsel for the Respondents 1, 2, 4 and 5:P.V.SANJAY KUMAR

The Court made the following :

JUDGMENT: (per the Hon'ble Sri Justice B.Sudershan Reddy)

The unsuccessful writ petitioner is the appellant in this writ appeal preferred against the order, dated 07-09-2004, passed by the learned Single Judge in W.P.No.24562 of 2003, whereunder the learned Judge disposed of the writ petition giving liberty to the appellant to avail the alternative remedy of arbitration.

The appellant herein has been appointed as Distributor of Indian Oil Corporation Limited for sale of the Corporation's Liquefied Petroleum Gas known as 'Indane' in cylinders only for household consumers, and commercial consumers like hotels, canteens, hospitals etc., subject to the terms and conditions mentioned in the Memorandum of Agreement entered by and between the appellant and the Corporation on 22-06-2002.

The appellant herein has filed the writ petition seeking a writ of *Mandamus* to declare the action of the respondents herein in not implementing the directions issued by the Ministry of Petroleum from time to time and the LPG manual guidelines in the matter of maintenance of ceiling limit on sale of refills.

We are required to notice that the appellant commenced its business only on 23-06-2002 after being appointed as the distributor in the manner referred to hereinabove.

According to the appellant, there were only about 5,535 active customers as on 31-10-2003 and the average sale of refills was 3,500 per month. It is asserted that as per the manual ceiling, limit has been fixed at 8,000 LPG refills, in respect of an area having population of up to 10,00,000, and therefore, the Corporation is duty bound to ensure that at least there is a sale of 8,000 LPG refills. The grievance of the appellant is that the sale of refills per month of its agency comes to around 3,000 only, which is far less than 8,000 per month. That a representation has been made in this regard which did not receive any response whatsoever from the Corporation. It is under those circumstances, the writ petition has been filed.

In the counter-affidavit, filed by the respondents, it is explained that Indian Oil Corporation Limited has four other LPG distributors at Nellore town as on January, 2004. That altogether 8,056 customers have already been transferred from donor

distributors in order to ensure that at least the appellant, being a new dealer, reaches 50% of the refill ceiling limit mark.

It was pointed out that the third respondent's refill sale per month is at 12,543 as against 4,281 of the appellant. The contention was that the refill sales of the third respondent is more than 150% over and above the ceiling limit of 8,000/- refilling sales per month. There must be a rational distribution ensuring a fair deal to all the distributors. The very purpose of issuing the instructions by the Ministry of Petroleum was with a view to restructure the sales and to ensure fair and equitable distribution of business.

Learned Judge having noted the averments made in the counter affidavit and having considered the submissions, observed that "prima facie, the grievance of the petitioner appears to be very genuine. However, having regard to the interim directions already given and the statements made in the counter-affidavit to the effect that sufficiently the refills have already been transferred to the petitioner, so as to reach the target, there cannot be any grievance remaining, which is yet to be solved." The learned Judge having made that observation, disposed of the writ petition on the ground that the appellant has an alternative remedy of arbitration.

The question that falls for consideration is whether there is any alternative remedy, as such, available to the appellant?

We have carefully scrutinized the contents of the Memorandum of Agreement, dated 22-06-2002, entered by and between the appellant and the Indian Oil Corporation Limited, whereunder the appellant has been appointed as a distributor for sale of Corporation's Liquefied Petroleum Gas. The agreement contains detailed terms and conditions subject to which the appellant has been appointed as a dealer. That one important aspect required to be noticed is that the LPG cylinders to be sold by the appellant as a distributor of the Corporation remains the property of the Corporation. The distributor is required to bear all expenditure of his business. The agreement provides the details and conditions under which the agreement could be terminated. It is not necessary to refer in detail the terms and conditions incorporated in the Agreement. Clause 37-A is relevant for the present purpose, which reads as under:

> "All questions, disputes and differences arising under or in relation to this Agreement shall be referred to the sole arbitration of the Director

(Marketing) of the Corporation. If such Director (Marketing) is unable or unwilling to act as the sole arbitrator, the matter shall be referred to the sole arbitration or some other officer of the Corporation by such Director (Marketing) in his place, who is willing to act as such sole arbitrator. It is known to the parties herein that the Arbitrator appointed hereunder is an employee of the Corporation and may be Shareholder of the Corporation. The arbitrator to whom the matter is originally referred, whether the Director (Marketing) or Officer, as the case may be, on his being transferred or vacating his office or being unable to act, for any reason, the Director (Marketing) shall designate any other person to act as arbitrator in accordance with the terms of the Agreement and such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also the term of this Agreement that no person other than the Director (Marketing) or the person designated by the Director (Marketing) as aforesaid shall act as arbitrator. The award of the Arbitrator so appointed shall be final, conclusive and binding on all the parties to the Agreement and provisions of the Arbitration & Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the Rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause."

That a plain reading of Clause 37-A suggests that all disputes and differences arising under or in relation to the Agreement entered by and between the parties shall be referred to the sole Arbitrator. The dispute raised by the appellant herein is as to the entitlement of a particular quantity of refill cylinders and the manner of distribution of that privilege conferred by the Corporation. In such view of the matter, we have no doubt in our mind whatsoever that the appellant is entitled to raise a dispute before the Arbitrator by raising all the contentions raised in this writ petition and such other grounds or contentions as may be available to it in law. The submission that there is no privity of contract between the appellant and third respondent and therefore, no arbitration can be raised by the appellant, in our considered view, is untenable. The dispute is not *per se* between the appellant and the third respondent. The dispute raised by the appellant squarely falls within the expression "all questions, disputes and differences arising under or in relation to this Agreement." The dispute is basically with the Corporation since the appellant claims that the Corporation is duty bound to make a rational arrangement in the matter of sale of refills and restructure the distribution system in fair and equitable manner in the light of and in accordance with the guidelines issued by the Ministry from time to time. In such view of the matter, it cannot be said that the appellant has no remedy

by way of arbitration.

The dispute raised by the appellant essentially centers around the interpretation of various clauses of the instructions and guidelines issued by the Ministry of Petroleum from time to time as a measure of policy formulation. It would be in fitness of things to invite the view of the arbitrator in respect of the dispute sought to be raised by the appellant in the writ petition.

Learned Judge having held that there is an alternative remedy of arbitration available to the appellant herein, ought not to have made any observations that may have a bearing upon the arbitration proceedings. The observations made by the learned Judge are accordingly set aside and they shall have no bearing whatsoever upon the dispute to be raised by the appellant before the arbitrator. The arbitration proceedings have to go on uninfluenced by the observations made by the learned Judge in disposing of the writ petition.

The dispute to be raised by the appellant shall be entertained by the arbitrator for the resolution of the same in accordance with law.

The writ appeal is accordingly disposed of without any order as to costs.

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B.SUDERSHAN REDDY,J

DATED:16-12-2004

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C.V.RAMULU

GJ

To

1 The Area Manager (LPG) Indian Oil Corporation Limited Indane Area Office GVR Towers, II Floor, Bharathi Nagar, Ring Road Vijayawada
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6 Two C.D. copies.